

RESEARCH AGREEMENT

**Rural Industries Research and Development Corporation trading as
AgriFutures Australia**

AND

####

Project Number: PRJ-####

Project Name: ####

Document Approval and Version Control

Policy Type	Management
Policy Category	Research and Development
Document version:	Version v
Prepared By:	Christine Quick
Date:	9 October 2014
Approved By:	Managing Director
Date:	12 October 2014

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RESEARCH AGREEMENT

PARTIES

RURAL INDUSTRIES RESEARCH AND DEVELOPMENT CORPORATION trading as AgriFutures Australia ABN 25 203 754 319 of Building 007, Charles Sturt University, Boorooma Street, Wagga Wagga, New South Wales (**AgriFutures Australia**)

ABN ## of ## (**Research Organisation**)

BACKGROUND

- A.** AgriFutures Australia has agreed to appoint the Research Organisation to carry out the Project and the Research Organisation has agreed to accept the appointment on the terms set out in this agreement.
- B.** The parties acknowledge that:
- (a) the primary aim of the Project is to benefit Australian rural industries, including the development and dissemination of valuable Project Intellectual Property and Project Material; and
 - (b) maximisation of commercial returns is a secondary aim which will not be pursued to the detriment of the primary aim.

AGREEMENTS

1. Definitions and interpretation

1.1 Definitions

1.1.1 Where commencing with a capital letter:

Administrative Contact means ## and such other person approved in writing by AgriFutures Australia;

AgriFutures Australia Assets means all assets specified in the Budget to be provided by AgriFutures Australia;

AgriFutures Australia Funds means all funds specified in the Budget to be provided by AgriFutures Australia;

AgriFutures Australia Material means all material and information to be provided by AgriFutures Australia to the Research Organisation for the purpose of this agreement specified in schedule 5;

Assets means AgriFutures Australia Assets and Research Organisation Assets;

Background Intellectual Property means all Intellectual Property to be made available by the party to the Project specified in schedule 5;

Budget means the budget set out in schedule 2;

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Business Day means Monday to Friday other than a public holiday in Wagga Wagga;

Commencement Date means the date on which this agreement is entered into or another date agreed in writing between the parties;

Commercialise means, in relation to Intellectual Property, to manufacture, sell, hire or otherwise exploit a product or process, or to provide a service, using the Intellectual Property, or to license any person to do any of those things;

Confidential Information means all trade secrets and know-how, financial information and other commercially valuable information of whatever description and in whatever form;

Dispose means, in relation to any property, sell, transfer, assign, create any interest over, part with the benefit of or otherwise dispose of the property;

Expert means a suitably qualified expert valuer appointed by the Chairperson of the Australian Valuers Institute or his nominee, who has no direct or indirect personal interest in the outcome of the determination he is required to make under clause 6;

Financial Year means a period of 12 months commencing on 1 July and ending on 30 June;

Funds means AgriFutures Australia Funds and Research Organisation Funds;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*;

Intellectual Property means all patents, trade marks, designs and plant breeder's rights (whether registered or not), copyright, know-how, trade secrets and eligible layout rights;

Interest means, in relation to each party, the proportion referred to or set out in schedule 4;

Milestone means a milestone specified in schedule 3;

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not;

Principal Investigator means ## and such other person approved in writing by AgriFutures Australia;

Project means the project described in schedule 1;

Project Intellectual Property means Intellectual Property subsisting in the Project Material or arising out of the Research Organisation's performance of its obligations under this agreement, other than the copyright in Reports;

Project Material means all material, other than Reports, brought into existence for the purpose of the Research Organisation performing its obligations under this agreement;

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Proposal means the research proposal provided by the Research Organisation to AgriFutures Australia dated ##;

Reports means reports, whether in writing or any other form, to be provided by the Research Organisation to AgriFutures Australia under clause 3.6.1(b) and drafts of those reports and includes all text, photographs, illustrations and other content of those reports;

Research Organisation Assets means all assets specified in the Budget to be provided by the Research Organisation, purchased by the Research Organisation with Research Organisation Funds or purchased by the Research Organisation with AgriFutures Australia Funds;

Research Organisation Funds means all funds specified in the Budget to be provided by the Research Organisation;

Research Organisation Material means all material and information to be provided by the Research Organisation for the purpose of this agreement specified in schedule 5; and

WHS Legislation means the *Work Health and Safety Act 2011* and any State or Territory legislation relating to occupational or work health and safety and includes all regulations, codes or guidelines, whether made under that legislation or otherwise, which apply to the parties in performing this agreement or conducting the Project and any other activities contemplated by this agreement.

1.1.2 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.2 Presumptions of interpretation

1.2.1 Unless the context otherwise requires:

- (a) a word which denotes:
 - (i) the singular denotes the plural and vice versa;
 - (ii) one gender denotes all genders; and
 - (iii) a person includes an individual, a body corporate, an association, a joint venture, a partnership, a government and any other legally recognised entities; and
- (b) a reference to:
 - (i) a party includes the executors, administrators, successors and permitted assigns of the party;
 - (ii) any legislation includes any regulation or instrument made under it and any amended, re-enacted or replacement legislation;
 - (iii) any agreement or other document includes that agreement or document as amended or replaced; and

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- (iv) any thing (including any amount) is a reference to the whole and each part, and a reference to a group of persons is a reference to each of them collectively and individually.

1.2.2 In this agreement:

- (a) clause headings are for convenience only and do not affect interpretation; and
- (b) “includes” is not a word of limitation.

1.2.3 If an act must be done on a specified day which is not a Business Day, the specified day is taken to be the next Business Day.

1.3 Several

An agreement, warranty, representation or obligation which binds or benefits 2 or more persons under this agreement binds or benefits those persons severally and not jointly or jointly and severally.

2. Appointment

2.1 The Project

AgriFutures Australia appoints the Research Organisation to carry out the Project in accordance with the Proposal, the Milestones and the Budget and the other terms set out in this agreement, and the Research Organisation accepts the appointment.

2.2 The Proposal

To the extent of any inconsistency between the terms of the Proposal and the terms of this agreement, the terms of this agreement prevail.

3. Obligations of the Research Organisation

3.1 Conduct of the Project

The Research Organisation must:

- (a) only apply the Funds and use the AgriFutures Australia Assets for the purposes of the Project and in accordance with the Proposal, the Budget and the Milestones;
- (b) use the Research Organisation Assets for the purposes of the Project and in accordance with the Proposal, the Budget and the Milestones and, in the case of Research Organisation Assets purchased by the Research Organisation with AgriFutures Australia Funds, only use them for the purposes of the Project;
- (c) not vary the Project, the Proposal, the Budget or the Milestones without AgriFutures Australia’s prior written consent;
- (d) use its best endeavours to meet all Milestones and complete the Project in accordance with the Milestones; and

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- (e) as reasonably required by AgriFutures Australia, attend meetings of committees established by AgriFutures Australia in connection with the Project.

3.2 Contributions

The Research Organisation must, in accordance with the Budget, provide for the sole purpose of the Project:

- (a) the Research Organisation Funds;
- (b) the Research Organisation Material; and
- (c) the Research Organisation Assets to be provided by it.

3.3 Directions

The Research Organisation must comply with all reasonable and lawful directions of AgriFutures Australia from time to time concerning the Project.

3.4 Comply with all laws

3.4.1 The Research Organisation must comply with:

- (a) all relevant laws; and
- (b) all applicable codes of conduct, industry standards or guidelines,

when performing its obligations or exercising its rights under this agreement.

3.4.2 Without limiting its other obligations under this agreement, the Research Organisation warrants that:

- (a) it, and any persons and any subcontractor which it engages to perform work under this agreement, will comply with all WHS Legislation, maintain all necessary licences, permits, registrations or other authorisations (however described) required by WHS Legislation and consult with AgriFutures Australia and its nominees regarding all matters relating to work health and safety;
- (b) it will, in carrying out work under this agreement, ensure, so far as is reasonably practicable, the health and safety of its personnel, the personnel of AgriFutures Australia and the personnel of any subcontractor and of any other persons who are “workers” within the meaning of the WHS Legislation, including ensuring that all such persons are provided with appropriate training and induction;
- (c) it, and any persons and subcontractor it engages to perform work under this agreement, will be familiar with and comply with AgriFutures Australia’s work health and safety policies and requirements so far as they relate to the performance of the Research Organisation’s obligations under this agreement and will not do (or omit to do) anything which would or may place AgriFutures Australia in breach of any WHS Legislation;
- (d) it will promptly notify AgriFutures Australia of any incidents or near misses relating to work health and safety and of any notices or communications from any work health and safety regulator or safety representative; and

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- (e) it will promptly provide such information and verification of these matters as is reasonably requested by AgriFutures Australia.

3.5 Financial records

The Research Organisation must:

- (a) in accordance with all applicable Australian Accounting Standards, keep accurate books of account and other records;
- (b) provide AgriFutures Australia with a final financial report within 3 months after completion of the Project or earlier termination of this agreement; and
- (c) provide AgriFutures Australia with financial reports at other times reasonably requested by AgriFutures Australia,

that record the receipt of AgriFutures Australia Funds and the expenditure of Funds in sufficient detail so that the amounts payable to or by the Research Organisation under this agreement can be properly ascertained.

3.6 Reporting

3.6.1 The Research Organisation must:

- (a) keep AgriFutures Australia informed about the progress of the Project, including promptly notifying AgriFutures Australia of the development of any Project Intellectual Property or Project Material which might be Commercialised;
- (b) by the dates referred to in schedule 3, provide AgriFutures Australia with progress reports and a final report on the conduct and results of the Project;
- (c) comply with the reporting requirements specified in schedule 6 by the dates specified in schedule 6;
- (d) ensure that all Reports are in the form and contain the information specified in the AgriFutures Australia reporting template provided by AgriFutures Australia to the Research Organisation from time to time or otherwise notified by AgriFutures Australia to the Research Organisation;
- (e) without limiting paragraph (d), ensure that all Reports are of a high standard acceptable to AgriFutures Australia on reasonable grounds, including being proofread and edited to a high standard; and
- (f) provide all other information in connection with the Project or this agreement that AgriFutures Australia may reasonably require.

3.6.2 Without limiting clause 6.1.2, the Research Organisation:

- (a) acknowledges that AgriFutures Australia may as it considers appropriate alter any Report provided that any alteration is consistent with the author's moral or similar rights or any consent given under clause 6.11;
- (b) acknowledges that, notwithstanding any other provision of this agreement, AgriFutures Australia may as it considers appropriate copy, reproduce, publish,

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exploit or otherwise use or disclose any Report, including deciding not to publish, exploit or otherwise use or disclose it; and

- (c) must not copy, reproduce, publish, exploit or otherwise use or disclose any Report without the prior written consent of AgriFutures Australia.

3.6.3 AgriFutures Australia acknowledges that, except to the extent of the Research Organisation's negligence, breach of this agreement or other default, it uses Reports at its own risk.

3.7 Audit or examination

AgriFutures Australia may on 7 days' notice to the Research Organisation audit or examine the Research Organisation's books of account and other records relevant to the Project to:

- (a) determine the correctness of any financial report or Report under this agreement or compliance by the Research Organisation of its obligations under this agreement; or
- (b) in the case of a failure by the Research Organisation to provide information in accordance with clause 3.5 or 3.6, to obtain information required to be provided under those clauses.

3.8 Retention

The Research Organisation must retain the Research Organisation's books of account and other records required for the purposes of clause 3.7 for at least 7 years after completion of the Project.

3.9 Insurance

3.9.1 The Research Organisation must, unless otherwise agreed in writing by AgriFutures Australia, at all times maintain:

- (a) adequate workers' compensation insurance as required by law for its employees;
- (b) professional indemnity insurance in the amount of \$5 million for each claim; and
- (c) public liability insurance in the amount of \$10 million for each claim.

3.9.2 The Research Organisation must, on request by AgriFutures Australia, produce evidence of the currency of the insurance policies referred to in clause 3.9.1.

3.9.3 Clause 3.9.1 does not apply where the Research Organisation is a department or statutory body of the Commonwealth of Australia or an Australian state or territory and self-insures.

3.10 Personnel

3.10.1 The Research Organisation must cause the Principal Investigator to manage and supervise the day to day work on the Project.

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- 3.10.2 The Research Organisation must cause the Administrative Contact to manage the Research Organisation's compliance with the day to day administrative requirements of this agreement.
- 3.10.3 The Research Organisation must not, without the prior written consent of AgriFutures Australia, engage agents, contractors or students to assist the Research Organisation in carrying out its obligations under this agreement. Where the Research Organisation engages agents, contractors or students, the Research Organisation is liable for all acts and omissions of the agent, contractor or student and remains liable for the Research Organisation's obligations under this agreement.
- 3.10.4 The Research Organisation must ensure the safety of its agents, contractors and students engaged to work on the Project and all other persons employed or engaged by it or its agents, contractors and students to work on the Project, including ensuring:
- (a) a safe working environment;
 - (b) safe systems of work;
 - (c) safe equipment;
 - (d) such information, policies, training and supervision as are reasonably necessary to ensure the safety of those persons from injury and other risks to health; and
 - (e) monitoring of the health and welfare of those persons to the extent relevant for the prevention of work related injuries.

3.11 Warranties

The Research Organisation warrants that:

- (a) all employees, agents, contractors and students employed or engaged by it have the necessary experience, skill and ability to properly carry out the Project on the terms set out in this agreement;
- (b) all work undertaken under this agreement will be undertaken diligently, competently, in a professional manner and in accordance with generally accepted professional, scientific and ethical principles and standards; and
- (c) it will obtain all necessary approvals, consents and authorisations for the purpose of carrying out the Project.

4. AgriFutures Australia contributions

4.1 AgriFutures Australia's obligations

- 4.1.1 AgriFutures Australia must, in accordance with the Budget and the Milestones, provide to the Research Organisation:
- (a) the AgriFutures Australia Funds;
 - (b) the AgriFutures Australia Material; and
 - (c) the AgriFutures Australia Assets,

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for the sole purpose of the Project.

- 4.1.2 The parties may agree in writing any earlier dates or times for payment of the AgriFutures Australia Funds to the Research Organisation than the dates or times specified in the Budget and the Milestones.

4.2 Suspension

Without limiting AgriFutures Australia's rights under clause 11.2.1, AgriFutures Australia may suspend payment of any of the AgriFutures Australia Funds or provision of any AgriFutures Australia Material or AgriFutures Australia Assets if the Research Organisation:

- (a) does not achieve a Milestone which was to be completed by the due date for the payment or provision of AgriFutures Australia Material or AgriFutures Australia Assets to a standard acceptable to AgriFutures Australia on reasonable grounds;
- (b) does not provide Reports in accordance with clause 3.6.1;
- (c) does not ensure that the Principal Investigator and other personnel specified in schedule 1 (or replacement persons approved by AgriFutures Australia) carry out the Project; or
- (d) is in breach of any other of its material obligations under this agreement,

until the matter is rectified to the reasonable satisfaction of AgriFutures Australia.

4.3 Assets

- 4.3.1 The Research Organisation must, with the Funds, and in accordance with the Budget, purchase the Assets specified in the Budget to be purchased by it.

- 4.3.2 The Research Organisation may, with the prior written approval of AgriFutures Australia, use Funds to purchase Assets required for carrying out the Project in addition to those specified in the Budget.

- 4.3.3 The Research Organisation is responsible for the safekeeping and maintenance of and all other costs and liabilities associated with the Assets.

- 4.3.4 The Research Organisation must not encumber or Dispose of any Asset.

- 4.3.5 On the termination of this agreement the Research Organisation must:

- (a) return to AgriFutures Australia all AgriFutures Australia Assets; and
- (b) subject to clause 4.3.6, at no cost to AgriFutures Australia assign to AgriFutures Australia free from all encumbrances ownership of that proportion of Research Organisation Assets purchased with AgriFutures Australia Funds.

- 4.3.6 AgriFutures Australia may, on termination of this agreement, by notice to the Research Organisation waive its rights under clause 4.3.5 on such conditions as AgriFutures Australia may notify to the Research Organisation.

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4.4 GST

4.4.1 Unless otherwise indicated, amounts stated in this agreement do not include GST.

4.4.2 In relation to any GST payable for a taxable supply by a party under this agreement, the recipient of the supply must pay the GST subject to the supplier providing a tax invoice.

4.4.3 Terms used in this clause 4.4 which are defined in the GST Act have the same meaning as in the GST Act.

5. Background Intellectual Property

5.1 Provision

During the term of this agreement each party must make available for the Project the Background Intellectual Property to be provided by it.

5.2 Warranties

Each party warrants that:

- (a) it is the owner of, or is otherwise entitled to provide, the Background Intellectual Property which it makes available for the Project;
- (b) the use of the Background Intellectual Property in accordance with this agreement will not infringe any other person's Intellectual Property rights (excluding patent rights);
- (c) to the best of its knowledge and belief after due inquiry, the use of the Background Intellectual Property in accordance with this agreement will not infringe any other person's patent rights;
- (d) except to the extent disclosed in schedule 5, the Background Intellectual Property is unencumbered; and
- (e) it will not Dispose of or Commercialise the Background Intellectual Property so as to prejudice its use in accordance with this agreement.

5.3 Interest

Subject to the terms of this agreement, no party by virtue of this agreement obtains any interest in or right to use the other party's Background Intellectual Property for any purpose other than in accordance with this agreement.

5.4 Licence

Subject to the terms of this agreement, each party has a non-exclusive royalty-free licence to use the other party's Background Intellectual Property for the purposes of the Project (including a right of sublicense to the party's agents, contractors and students engaged to work on the Project, provided that, in the case of the licence to the Research Organisation, the agents, contractors and students are approved by AgriFutures Australia under clause 3.10.3).

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5.5 Infringement

Each party must give the party which provided the Background Intellectual Property prompt notice of any infringement of that Background Intellectual Property which comes to its attention.

6. Project Intellectual Property and Project Material

6.1 Ownership

6.1.1 Project Intellectual Property and Project Material is owned by the parties in accordance with their respective Interests as tenants in common.

6.1.2 AgriFutures Australia owns the copyright in all Reports as and when they are created.

6.2 Provision of information

The Research Organisation must:

- (a) identify Project Intellectual Property and Project Material generated or developed by it in connection with the Project; and
- (b) within 3 months after completion of the Project, provide AgriFutures Australia with a written report regarding the Project Intellectual Property and Project Material in sufficient detail to enable AgriFutures Australia to determine the nature of the Project Intellectual Property and Project Material and its potential use.

6.3 Notice

The Research Organisation must promptly notify AgriFutures Australia if it considers that:

- (a) the Project Intellectual Property, Project Material or Reports anticipated by the parties from the Project at the time of entering into this agreement will or may be no longer of benefit to an Australian primary industry which was intended to benefit from the Project; or
- (b) the Project will or may not produce the Project Intellectual Property, Project Material or Reports anticipated by the parties from the Project at the time of entering into this agreement.

6.4 Licence

6.4.1 Subject to this agreement, each party has a non-exclusive royalty-free right to use Project Intellectual Property and Project Material for the purposes of the Project.

6.4.2 Subject to this agreement, each party has a non-exclusive royalty-free right to use Project Intellectual Property and Project Material for the purposes of research and development provided that, where Commercialisation of Intellectual Property arising out of that research and development requires access to the Project Intellectual Property or Project Material, it may only use the Project Intellectual Property or Project Material for the purposes of that Commercialisation under licence on terms agreed between the parties or, failing agreement, on reasonable arm's length terms determined by an Expert.

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- 6.4.3 Each party's rights under clauses 6.4.1 and 6.4.2 include a right of sublicense to the party's agents, contractors and students engaged to work on the Project or conduct the research and development, provided that, in the case of the licence to the Research Organisation, the agents, contractors and students are approved by AgriFutures Australia under clause 3.10.3.
- 6.4.4 Project Intellectual Property and Project Material may not be used by a party for purposes other than those set out in clauses 6.4.1 to 6.4.3 except with the prior written agreement of the other party.
- 6.4.5 Subject to this agreement, the Research Organisation has a non-exclusive royalty-free right to use Reports for the purposes of research and development provided that, where Commercialisation of Intellectual Property arising out of that research and development requires access to the Project Intellectual Property or Project Material, it may only use the Reports for the purposes of that Commercialisation under licence on terms agreed with AgriFutures Australia. The Research Organisation's rights under this clause 6.4.5 include a right of sublicense to the Research Organisation's agents, contractors and students engaged to conduct the research and development, provided that they are approved by AgriFutures Australia under clause 3.10.3.
- 6.4.6 Reports may not be used by the Research Organisation for purposes other than those set out in clause 6.4.5 except with the prior written agreement of AgriFutures Australia.
- 6.5 Commercially valuable Project Intellectual Property or Project Material**
- 6.5.1 If a party considers on reasonable grounds that the parties may Commercialise any Project Intellectual Property or Project Material, it may notify the other party accordingly, identifying the Project Intellectual Property or Project Material and detailing how it might be Commercialised.
- 6.5.2 On receipt of a notice under clause 6.5.1, any subsequent use by a party of the Project Intellectual Property or Project Material must not without the prior written agreement of the other party prejudice:
- (a) the ability of the parties to obtain protection for the Project Intellectual Property or Project Material; or
 - (b) Commercialisation by the parties of the Project Intellectual Property or Project Material.
- 6.5.3 The parties must after receipt of a notice under clause 6.5.1 in good faith seek to agree:
- (a) appropriate protection for the Project Intellectual Property or Project Material; and
 - (b) a plan for Commercialisation of the Project Intellectual Property or Project Material.
- 6.5.4 The parties must protect and Commercialise the Project Intellectual Property and Project Material as agreed under clause 6.5.3.
- 6.5.5 The parties acknowledge that:
- (a) the costs of any protection; and

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(b) the net proceeds of Commercialisation,

agreed under clause 6.5.3 will be shared by them in proportion to their respective Interests or as otherwise agreed in writing between them.

6.5.6 If the parties are unable within 1 month after receipt of a notice under clause 6.5.1 to agree appropriate protection for Project Intellectual Property or Project Material under clause 6.5.3(a), a party may at its cost arrange appropriate protection and is entitled to recover its costs of doing so from the proceeds of Commercialisation agreed under clause 6.5.3(b) before the net proceeds of Commercialisation are shared by the parties.

6.5.7 Where Commercialisation of Project Intellectual Property or Project Material requires access to a party's Background Intellectual Property, the party must, subject to this clause 6.5, license the Background Intellectual Property for the purposes of that Commercialisation on terms agreed between the parties or, failing agreement within 2 months after receipt of a notice under clause 6.5.1, on reasonable arm's length terms determined by an Expert.

6.6 Expert determination

In making a determination under clause 6.4 or 6.5:

- (a) the Expert acts as an expert and not as an arbitrator;
- (b) his decision is, in the absence of manifest error, final and binding on the parties; and
- (c) the costs of the Expert are to be borne by one or more of the parties as determined by the Expert.

6.7 Disposal of Interest

6.7.1 No party may Dispose of its interest in Project Intellectual Property or Project Material without the prior written consent of the other party, such consent not to be unreasonably withheld. The Research Organisation consents to the Disposal by AgriFutures Australia of an interest in Project Intellectual Property and Project Material to any party that provides funding to AgriFutures Australia for the Project.

6.7.2 Each party that Disposes of an interest in Project Intellectual Property or Project Material must ensure that the recipient complies with the terms of this agreement relating to Project Intellectual Property and Project Material as if it was a party to it.

6.8 Full ownership

AgriFutures Australia is not obliged to comply with clauses 6.4.4, 6.5 and 6.7 if its Interest is 100%.

6.9 Warranties

The Research Organisation warrants that:

- (a) the carrying out of the Project will not infringe any other person's Intellectual Property rights (excluding patent rights);

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- (b) to the best of its knowledge and belief after due inquiry, the carrying out of the Project will not infringe any other person's patent rights;
- (c) subject to encumbrances disclosed in schedule 5, each party will be entitled to use the Project Intellectual Property and the Project Material without the consent of any other person; and
- (d) subject only to provision of consents under clause 6.11, AgriFutures Australia will be entitled to use the Reports without the consent of any other person.

6.10 Communications

6.10.1 The Research Organisation must:

- (a) not publish or disseminate Reports without the prior written consent of AgriFutures Australia;
- (b) not publish or disseminate other information relating to the Project or its results, whether in writing or by audio-visual, oral presentation or any other means (**Communication**), without the prior written consent of AgriFutures Australia, such consent not to be unreasonably withheld; and
- (c) ensure that any Communication acknowledges the contribution to and support of the Project by AgriFutures Australia in a manner acceptable to AgriFutures Australia and contains a disclaimer of liability acceptable to AgriFutures Australia.

6.10.2 The Research Organisation must request in writing that AgriFutures Australia consent to the Communication (**Request**), and, within 30 days after receipt of the Request, AgriFutures Australia must notify the Research Organisation that:

- (a) it consents to the Communication;
- (b) it consents to the Communication with specified amendments and provide reasons; or
- (c) it does not consent to the Communication and provide reasons.

6.10.3 If AgriFutures Australia provides a notice under clause 6.10.2(b) or (c), if requested by the Research Organisation the parties must in good faith seek to agree a basis on which AgriFutures Australia would consent to the Communication.

6.10.4 If AgriFutures Australia does not consent to the Communication, the Research Organisation must not publish or disseminate the Communication.

6.10.5 Without limiting clause 6.10.1(b), AgriFutures Australia may withhold its consent if it considers on reasonable grounds that the Communication may:

- (a) disclose AgriFutures Australia's Confidential Information;
- (b) prejudice AgriFutures Australia's interests in any Intellectual Property, including a right to protect or Commercialise Intellectual Property; or

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- (c) prejudice the best interests of AgriFutures Australia or an Australian rural industry.

6.10.6 A party must not use the name, a logo or a trade mark of the other party without the other party's consent, and may only use the name, logo or trade mark in accordance with any directions of the other party.

6.11 Moral rights

The Research Organisation must take all reasonable steps to procure from the Principal Investigator and any other author involved in the creation of, or anything that forms part of:

- (a) the Research Organisation Material;
- (b) Research Organisation Background Intellectual Property;
- (c) the Project Material; or
- (d) the Reports,

a consent in relation to paragraphs (a) to (d) to the following acts and omissions:

- (e) use without attribution to the Principal Investigator or the author;
- (f) altering them in any manner reasonably authorised by AgriFutures Australia; and
- (g) using them other than as contemplated by this agreement.

7. Confidentiality and privacy

7.1 Confidentiality

7.1.1 Each party must during and after the term of this agreement:

- (a) keep the Confidential Information of the other party confidential; and
- (b) use the Confidential Information of the other party only as contemplated by this agreement.

7.1.2 Each party must, subject to its legislative requirements, on request from the other party return all Confidential Information of the other party to the other party and permanently delete from all computer systems under the party's control all Confidential Information of the other party which is in electronic form, subject to retention of 1 copy for archival purposes.

7.2 Exceptions

7.2.1 The obligations of a party under clause 7.1 do not apply to any Confidential Information which a party can demonstrate:

- (a) was in the party's possession at the time of disclosure to the party and was not acquired in breach of or under an obligation of confidence;

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- (b) is in the public domain other than as a result of breach of this agreement;
- (c) was acquired from a third party, provided that it was not acquired by the third party unlawfully or in breach of or under an obligation of confidence; or
- (d) is required to be disclosed by law.

7.2.2 Notwithstanding clause 7.1, where a party is a department or statutory body of the Commonwealth of Australia or an Australian state or territory, it may disclose Confidential Information:

- (a) to Parliament, the Governor, Cabinet or to a Cabinet or Parliamentary committee or sub-committee;
- (b) to any Commonwealth, state or territory agency, authority, instrumentality, Minister or officer to whom it is customary for the party to disclose the Confidential Information; or
- (c) for the purposes of prosecuting or defending any legal proceedings or for the purposes of obtaining expert advice with respect to the provisions of this agreement, provided that the party must, if requested by the other party, require the person to whom the Confidential Information will be disclosed to provide the other party with written undertakings (in a form and on terms acceptable on reasonable grounds to the other party) not to divulge any of that Confidential Information to any other person.

7.3 Personnel

7.3.1 Each party must use its best endeavours to ensure that:

- (a) each employee, agent, contractor and student employed or engaged by it who has access to the Confidential Information of another party is bound by obligations of confidentiality in substantially the same terms as these obligations of confidentiality; and
- (b) any of the employees, agents, contractors and students who cease to be employed or engaged by the party continue to be bound by such obligations of confidentiality.

7.3.2 Each party may only disclose Confidential Information of the other party to those persons requiring access for the purpose of the Project.

7.4 Privacy

The Research Organisation must:

- (a) comply with the Australian Privacy Principles set out in the *Privacy Act 1988* which concern the collection, security, access, data quality, relevance, use, disclosure or other handling of Personal Information to the extent that the content of those Principles apply to the types of activities that the Research Organisation undertakes under this agreement;

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- (b) not transfer Personal Information held in connection with this agreement outside Australia, or allow parties outside Australia to have access to it, without the prior written approval of AgriFutures Australia;
- (c) cooperate and comply with any reasonable directions, guidelines, demands or inquiries made by AgriFutures Australia or the Australian Information Commissioner in relation to the management and handling of Personal Information by the Research Organisation or breaches or alleged breaches of privacy and provide AgriFutures Australia or the Australian Information Commissioner with access for the purpose of monitoring a party's compliance with this clause 7.4;
- (d) ensure that any person who has an access level which would enable that person to obtain access to any Personal Information is made aware of and undertakes in writing to observe the Australian Privacy Principles referred to in paragraph (a); and
- (e) ensure that any record (as defined in the *Privacy Act 1988*) containing Personal Information provided to the Research Organisation by AgriFutures Australia or any other person in connection with this agreement is on the termination of this agreement returned to AgriFutures Australia or deleted or destroyed at AgriFutures Australia's direction.

8. Material

8.1 Ownership

8.1.1 The AgriFutures Australia Material remains the property of AgriFutures Australia.

8.1.2 The Research Organisation Material remains the property of the Research Organisation.

8.2 Safekeeping

The Research Organisation is responsible for the safekeeping and maintenance of the AgriFutures Australia Material, the Project Material and the Reports and must ensure that they are used, copied, supplied or reproduced only for the purposes of this agreement.

8.3 Provision

On termination of this agreement the Research Organisation must immediately on request from AgriFutures Australia:

- (a) return the AgriFutures Australia Material and all copies of it to AgriFutures Australia and permanently delete from all computer systems under the control of the Research Organisation all AgriFutures Australia Material which is in electronic form;
- (b) provide AgriFutures Australia with a copy of all Project Material, including all Project Material which is in electronic form; and
- (c) provide AgriFutures Australia with all copies of the Reports and permanently delete from all computer systems under the control of the Research Organisation

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all Reports which are in electronic form, subject to retention of 1 copy for archival purposes.

9. Conflict of interest

The Research Organisation must not, during the term of this agreement, without the prior written consent of AgriFutures Australia undertake any activity that will adversely impact on the Research Organisation's ability to undertake the Project fairly and independently in accordance with the terms of this agreement.

10. Force Majeure

10.1 Event

10.1.1 If a party (**Affected Party**) becomes unable because of Force Majeure to perform an obligation placed on it under this agreement (other than an obligation to pay money), the Affected Party must give the other party prompt written notice of:

- (a) reasonable particulars of the Force Majeure; and
- (b) so far as is known, the probable extent to which the Affected Party will be unable to perform the obligation.

10.1.2 In this clause 10 **Force Majeure** means, in respect of a party, any reason or cause, other than lack of funds, which could not with reasonable diligence be controlled or prevented by the party, including war, insurrection, riot, civil commotion, strikes, lock-outs, labour or industrial disputes, acts of God, acts of Governments, flood, storm, power shortages or failures or inability to obtain sufficient labour, raw materials, fuel or utilities.

10.2 Effect

If clause 10.1 applies:

- (a) the obligation will be suspended during the Force Majeure;
- (b) the Affected Party must use all possible diligence to overcome or remove the Force Majeure as quickly as possible, although it is not required to settle any labour or other dispute creating the Force Majeure on terms contrary to its wishes or to contest the validity or enforceability of any law, regulation or decree by way of legal proceedings; and
- (c) a party may, by notice to the other party, terminate this agreement if the Force Majeure continues for 3 continuous months.

10.3 Unavailability of funds

10.3.1 AgriFutures Australia may rely on some or all of funds from the Commonwealth, industry levy funds and funds contributed from third parties in order to perform its obligations under this agreement.

10.3.2 AgriFutures Australia is not obliged to make any payment under this agreement unless:

- (a) the Minister for Agriculture has approved AgriFutures Australia's research and development plan (**R&D Plan**) and, if Ministerial approval is required,

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AgriFutures Australia's Annual Operational Plan (**AOP**) under Part 2 of the *Primary Industries Research and Development Act 1989* in relation to the Financial Year in which the payment is to be made; and

- (b) the R&D Plan and AOP are consistent with AgriFutures Australia making the payment.

10.3.3 Subject to clause 10.3.2, AgriFutures Australia will use its best endeavours to ensure that it has sufficient funds from the Commonwealth, industry levies and contributions from third parties to perform its obligations under this agreement, but will not be in breach of or liable for any losses under this agreement if, due to insufficient funds from the Commonwealth, industry levies or contributions from third parties, it is unable to perform its obligations under this agreement.

11. Term and termination

11.1 Term

This agreement commences on the Commencement Date and, subject to earlier termination in accordance with this agreement, terminates on the date on which the Project is completed in accordance with this agreement.

11.2 Default

11.2.1 If a party (**Defaulting Party**):

- (a) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration;
- (b) fails, within 1 month after receipt of notice from the other party, to remedy any breach of a material provision of this agreement which is capable of remedy (including a breach of clause 3.6.1);
- (c) breaches a material provision of this agreement which is not capable of remedy; or
- (d) persistently breaches a material provision of this agreement (including breaches of clause 3.6.1),

the other party may, by notice to the Defaulting Party, terminate this agreement.

11.2.2 If this agreement is terminated under clause 11.2.1:

- (a) termination will not affect the enforceability of any rights or obligations accrued under this agreement which survive termination;
- (b) if the Defaulting Party is AgriFutures Australia, it must pay the Research Organisation all monies outstanding for work completed and expenses properly incurred up to the date of termination and any reasonable costs of the Research Organisation directly attributable to the early termination of the Project;
- (c) termination is without prejudice to any other rights of the other party against the Defaulting Party;

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- (d) any licences of the Defaulting Party's Background Intellectual Property remain in force; and
- (e) the Defaulting Party retains the interest which it has as at the date of termination in Project Intellectual Property and Project Material and, in the case of AgriFutures Australia, copyright in Reports.

11.3 Notice

11.3.1 If AgriFutures Australia considers on reasonable grounds that:

- (a) the Project is no longer relevant to AgriFutures Australia's objects or functions;
- (b) the Project Intellectual Property, Project Material or Reports anticipated by AgriFutures Australia from the Project at the time of entering into this agreement will or may be no longer of benefit to an Australian primary industry which was intended to benefit from the Project;
- (c) the Project will or may not produce Project Intellectual Property, Project Material or Reports anticipated by AgriFutures Australia from the Project at the time of entering into this agreement; or
- (d) due to insufficient funds from the Commonwealth, industry levies or contributions from third parties, AgriFutures Australia will be unable to perform its obligations under this agreement,

AgriFutures Australia may, by 3 months' notice to the Research Organisation, terminate this agreement.

11.3.2 If this agreement is terminated under clause 11.3.1:

- (a) termination will not affect the enforceability of any rights or obligations accrued under this agreement which survive termination;
- (b) on termination the Research Organisation must cease entering into commitments to expend AgriFutures Australia Funds;
- (c) the Research Organisation must take all reasonable steps to minimise payments to be made by the Research Organisation for commitments entered into up to the date of termination;
- (d) AgriFutures Australia's obligation to contribute AgriFutures Australia Funds ceases, other than, subject to paragraph (c), for monies properly expended or committed by the Research Organisation up to the date of termination which have not by that date been paid to the Research Organisation under this agreement;
- (e) any licences of a party's Background Intellectual Property remain in force;
- (f) each party retains the interest which it has as at the date of termination in Project Intellectual Property and Project Material; and
- (g) AgriFutures Australia retains its copyright in Reports.

11.4 Uncommitted AgriFutures Australia Funds

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On termination of this agreement, unless otherwise agreed in writing by AgriFutures Australia:

- (a) if any AgriFutures Australia Funds paid to the Research Organisation remain uncommitted by the Research Organisation, the Research Organisation must repay those AgriFutures Australia Funds to AgriFutures Australia; and
- (b) the Research Organisation must deliver to AgriFutures Australia the AgriFutures Australia Material.

12. Dispute resolution

12.1 Dealing with disputes

12.1.1 The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this agreement prior to commencing any proceedings.

12.1.2 If a party requires resolution of a dispute it must do so in accordance with this clause 12.

12.1.3 The parties acknowledge that compliance with this clause 12 is a condition precedent to any entitlement to claim relief or remedy, whether by way of proceedings in a court of law or otherwise in respect of such disputes, except:

- (a) in the case of applications for urgent interlocutory relief; or
- (b) a breach by the other party of this clause 12.

12.2 Resolution by management

12.2.1 If a party requires resolution of a dispute it must immediately submit full details of the dispute to the chief executive officer of the other party.

12.2.2 If the dispute is not resolved within 30 days of submission of the dispute to them, or such other time as they agree, the provisions of clause 12.3 will apply.

12.3 Conciliation

12.3.1 Disputes must be submitted to conciliation in accordance with and subject to The Institute of Arbitrators and Mediators Australia *Conciliation Rules*.

12.3.2 A party may not commence proceedings in respect of the dispute unless the dispute is not settled by conciliation within 30 days of submission to conciliation, or such other time as the parties agree.

13. Relationship

Nothing in this agreement constitutes any party as an agent, partner, joint venturer or employee of any other party or creates any agency, partnership, joint venture or employment relationship. A party or any person acting on its behalf may not hold itself out as being entitled to contract or accept payment in the name of or on account of any other party.

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14. Australian Government

For the avoidance of doubt, no right or obligation arising from this agreement is to be read or understood as limiting the Research Organisation's rights to enter into public debate or criticism of the Australian Government, its agencies, employees, servants or agents.

15. Miscellaneous

15.1 Notices

15.1.1 A notice under this agreement must be in writing and may be given to the addressee by:

- (a) delivering it to the address of the addressee;
- (b) sending it by pre-paid post to the address of the addressee; or
- (c) sending it by fax to the fax number of the addressee,

and the notice will be deemed to have been received by the addressee on receipt.

15.1.2 A fax is deemed to have been received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the addressee.

15.2 Amendment

This agreement may only be varied by the written agreement of the parties.

15.3 Assignment

A party may only assign a right under this agreement with the prior written consent of the other party.

15.4 Entire agreement

15.4.1 This agreement embodies the entire understanding and agreement between the parties as to its subject matter.

15.4.2 All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this agreement are merged in and superseded by this agreement.

15.5 Further assurance

Each party must promptly:

- (a) sign all documents and do all things that the other party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it; and
- (b) act reasonably in effecting, perfecting and completing this agreement and all transactions incidental to it.

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15.6 Legal costs

The parties must each pay their own legal and other expenses relating directly or indirectly to the negotiation, preparation and signing of this agreement and all documents incidental to it.

15.7 Governing law and jurisdiction

15.7.1 This agreement is governed by and must be construed in accordance with the laws of New South Wales.

15.7.2 Each party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts which have jurisdiction to hear appeals from those courts; and
- (b) waives any right to object to proceedings being brought in those courts for any reason.

Research agreement

SCHEDULE 1

Project

##

Research agreement

SCHEDULE 2

Budget

##

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SCHEDULE 3

Milestones

##

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SCHEDULE 4

Interests

Default option

In proportion to the value of each party's monetary and in-kind contributions to the Project as set out in the Budget.

Alternative option

[Specify the parties' respective interests]##

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SCHEDULE 5

Background Intellectual Property and Material

##

SCHEDULE 6

Reporting timetable and requirements

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SIGNED AS AN AGREEMENT

Signed by **Rural Industries Research and Development Corporation trading as AgriFutures Australia:**

.....
Signature of witness

.....
Name of witness (print)

.....
Signature of authorised person

.....
Name of authorised person (print)

.....
Office held

Dated:

Signed by **##**:

.....
Signature of witness

.....
Name of witness (print)

.....
Signature of authorised person

.....
Name of authorised person (print)

.....
Office held

Dated: